

**REPORT - PLANNING COMMISSION MEETING
December 8, 2005**

Project Name and Number: Canyon Heights Tentative Tract Map (PLN2005-00234)

Applicant: City of Fremont

Proposal: To consider a Planned District Minor Amendment and Vesting Tentative Tract Map 7632 for a five lot subdivision of approximately 4.9 acres, and a Finding for General Plan Conformity for the surplus land sale of the property.

Recommended Action: Approve, based on findings and subject to conditions

Location: 40770 Canyon Heights Drive in the Mission San Jose Planning Area

Assessor Parcel Number(s): 525-0308-001-00

Area: Lot Area – 4.9 acres

Owner: City of Fremont

Agent of Applicant: City of Fremont Community Development Department

Consultant(s): Tom Shannon, Enshallah Real Estate Consulting and Development

Environmental Review: A Mitigated Negative Declaration has been previously adopted for the project.

Existing General Plan: Low Density Residential, 3-5 units/acre, and Hill Face Open Space

Existing Zoning: P-2005-234

Existing Land Use: Vacant

Public Hearing Notice: A total of 221 notices were mailed to owners and occupants of property within 1,000 feet of the site on the following streets: Esparito, Mackintosh, Canyon Heights, Clara, Lucy, Palatino, Slayton. The notices to owners and occupants were mailed on November 23, 2005. A Public Hearing Notice was delivered to The Argus on November 21, 2005 to be published by November 24, 2005. In addition, one public hearing notice was mailed as a courtesy to interested parties.

Executive Summary: The City initiated a General Plan Amendment and Planned District Rezoning for a 4.9 acre site located at 40770 Canyon Heights Drive. The intent was to change the land use of approximately one-third (1.65 acres) of the site from Open Space to Low Density Residential and designate the remaining 3.25 acres as Hill Face Open Space as it lies above the Toe of the Hill (TOH) as defined by the Hill Area Initiative of 2002 (Measure T). On September 27, 2005, the City Council voted 5-0-0-0 to approve the General Plan Amendment and Rezoning.

The current proposal is for a Planned District Minor Amendment and Vesting Tentative Tract Map 7632 for the subdivision of the 4.9 acre site, and for a General Plan conformity finding for the surplus sale of the land. The result will be the creation of five single family lots along Canyon Heights Drive for future residential development. The City would then transfer possession of the property and Vesting Tentative Tract Map to a developer through a surplus land sale process. The developer would be responsible for filing the Final Subdivision Map, building all improvements associated with the Subdivision Map, constructing and selling the single-family homes.

A Planned District Minor Amendment is proposed to slightly modify the lot standards that were approved as part of the Development Standards for the Planned District. The modifications resulted from accommodating the improvements needed to control drainage and debris flow for all five lots.

Background and Previous Actions: The site was originally transferred to the City as a vacant lot as part of Tract 3462 in 1973. The site was designated as natural open space as part of PUD 73-3. The recently approved General Plan Amendment and Rezoning was considered by the Planning Commission on August 11, 2005. The Commission voted 6-0-0-1 to recommend these items to the City Council. On September 27, 2005 the Council voted 5-0-0-0 to approve the General Plan Amendment and Rezoning.

Project Description: The proposed project is for a Planned District Minor Amendment and Vesting Tentative Tract Map 7632 for a five-lot single family subdivision which will be sold as surplus land. The lot configuration of the parcels is such that each lot will have frontage along Canyon Heights Drive.

Each lot is approximately 12,000 square feet, with the exception of Lot 5 which about 3.5 acres in size. Lot 5 contains the open space parcel above the Toe of the Hill Line which increases its size. An open space easement will be recorded over the portion of Lot 5 above the Toe of the Hill Line which will restrict uses to certain agricultural uses as permitted by the Hill Area Initiative of 2002 (Measure T). These uses include grazing, horticulture, floraculture and aboriculture.

The Planned District Minor Amendment is also proposed to modify the lot standards to improve site drainage. As a result of the mapping process for the tract map, a slight modification to the lot sizes resulted from accommodating a drainage "J" ditch and a "slope maintenance bench" for the properties. These improvements will control drainage and debris flow on the hillside as a preventive measure for the five properties and any improvements on those properties. The drainage ditch and a "slope maintenance bench" have been located below the Toe-of-the-Hill (TOH). The result is a modification to the lot standards and rear yard setback, specifically "Lot Depth" was reduced by 15 feet, "Minimum Lot Size" was reduced by 200 square feet and the rear yard setback was increased to 50 feet.

PROJECT ANALYSIS:

Legal Requirement for Public Land Disposition: California Government Code Section 65402 establishes requirements for review of public property transactions by local planning agencies. Pursuant to the State Code, the City of Fremont is required to submit all dispositions of property for public purposes to the Planning Commission. The City may not dispose of any property until the location, purpose and extent of the disposition has been reviewed by the Planning Commission as to conformity with the adopted General Plan. The law requires the Commission to render its report on conformity within 40 days after the matter was submitted.

While there is no legal requirement that the Planning Commission hold a public hearing on a Conformity Finding with the General Plan, this procedure has been observed for other public dispositions and acquisitions. The public hearing will help assure that adequate public notice is provided as to the intent to dispose of the property for private development, and that the public is allowed to provide comments early in the planning process. Assuming that the Planning Commission finds that the disposition of the subject site is in conformity with the General Plan, the City Council is tentatively scheduled to consider the proposed disposition at their December 13 meeting.

General Plan Conformance: The existing General Plan land use designation for the project site is Low Density Residential, 3-5 units per acre, and Hill Face Open Space for the area above the Toe of the Hill Line. The proposed project is consistent with the existing General Plan land use designation for the project site because single-family residential development is proposed for and the primary allowed use in Low Density Residential land use designations. The General Plan does not specifically address this site for any purpose or use other than the limited residential development anticipated, and preservation of the open space land above the Toe-of-the-Hill Line, (TOH Line). The proposed disposition of land for private development purposes is consistent with the following goals, objectives and policies of the General Plan:

- **Fundamental Goal F-2:** *A harmonious blend of the natural and built environments.*

- **Fundamental Goal F-3:** *A cityscape with an open feeling.*

Analysis:

The disposition of land is consistent with these two fundamental goals because the property is located at the base of the hills with only one-third of the site suitable for residential development. The remainder of the site will be preserved as open space maintaining the open feeling along the hills. This location also allows development relative to and in consideration of the open space land above the TOH Line.

- **Land Use Policy 1.1:** *Residential uses as the primary use allowed in residentially designated areas.*
- **Open Space Goal 1:** *Open space in the hills to protect Fremont's eastern open space frame.*
- **Open Space Objective 1.1:** *Protection of the Hill Face, ridgeline and stream corridors.*
- **Open Space Policy 1.1.2:** *Encourage preservation of open space on the Hill Face, ridgeline, and Niles Canyon to protect the City's visual character.*
- **Open Space Objective 1.2:** *Hill area residential development sensitive to its environment and as unobtrusive as possible.*

Analysis:

The disposition of land is consistent with the above goals, objectives and policies because the land will be developed in a manner consistent with the General Plan by allowing residential uses in a residential area while permanently preserving and protecting the Hill Face open space. Further, the design and development standards for the Planned District zoning have been prepared in consideration of protecting the open space frame of the hills.

Zoning Regulations: The proposed project has been previously rezoned to Planned District generally based on R-1-10, single-family development standards. A set of Planned District Guidelines and Standards has been created and approved to ensure conformity with zoning regulations in regards to development standards in the Hill Area and other applicable regulations.

A Planned District Minor Amendment is proposed to slightly modify the development standards approved as part of the Planned District, P-2005-234. Specifically, "Lot Depth" was reduced by 15 feet, "Minimum Lot Size" was reduced by 200 square feet, "Rear Yard Setbacks" were increased to 50 feet, and "Side Yard Setbacks" were slightly modified as indicated on Exhibit "E". The mapping process that created the design of the 5-lot subdivision resulted in two improvements that affected the lot sizes for the five properties. A drainage ditch and a slope maintenance bench are proposed for protecting the properties from water and debris flow down the hillside. These improvements are located below the TOH Line and as part of the larger Lot 5, which will have maintenance responsibility for these improvements. The developer will execute and record a deed restriction/maintenance agreement or other acceptable mechanism, in a form acceptable to the City Attorney, placing the maintenance responsibility of the concrete "J" ditch and slope maintenance bench on the owner of Lot 5, and providing enforcement mechanisms for the owners of Lots 1 to 4 and the City. (Condition #13)

Inclusionary Zoning: The project, with five single family lots, is not required to meet the City's Inclusionary requirement, as only projects of seven units or larger are subject to the Inclusionary Housing Ordinance.

Open Space/Landscaping: The project includes the designation of approximately 3.25 acres of land above the Toe of the Hill Line as permanent Open Space. This area will be left in its natural condition.

A 30 foot wet band will be required along the rear portion of each lot for fire protection purposes. Since Lot 5 includes an open space easement over a majority of the site and is substantially larger than the other parcels, the wetband will be located consistent as the other lots. Each lot will be landscaped independently with review and approval occurring during the Development Organization review process.

View Impacts: Impacts to views are not anticipated. The location of the lots close to Canyon Heights Drive and the generous building separation between units will protect views of the hills. The Planned District Development Standards approved for the project will ensure that view impacts are minimized.

ENGINEERING ANALYSIS:

Street Improvements: The project site has frontage on a public street, Canyon Heights Drive. Canyon Heights Drive is an existing residential collector street with an existing right-of-way width of sixty feet and a pavement width of forty feet. The existing street improvements along the project frontage consist only of curb and gutter.

A five-foot wide sidewalk will be installed along the project frontage and connect to the existing sidewalk on both sides of the property. The subdivision shall include the dedication of one-foot of right-of-way to provide the five-foot wide sidewalk and six-foot planter strip for a total of eleven feet. The subdivision shall also include the dedication of a six-foot public service easement along the public frontage.

Grading/Topography: The site currently slopes downward from northeast to southwest with existing surface elevations from 250 feet to 80 feet. The land is unimproved and is used for horse grazing. A horse corral exists on site and will be removed prior to commencement of any improvements on site. The City's existing storm drain system on Canyon Heights will need to be extended to serve the project site. A drainage "J" ditch and a 15-foot wide slope maintenance bench will be installed between the TOH Line and the rear lot lines, and a storm drain lateral installed along the northwest property line of Lot 5. These improvements will convey the drainage into the City's storm drain system and prevent debris flow onto the properties. Grading will be required for street improvements and other subdivision improvements. The estimated grading quantities are 72 cubic yards of cut and 621 cubic yards of fill.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The developer will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.

Geologic Hazards: The site proposed for development is located within a seismic hazard zone for both earthquake-induced landslides and liquefaction, as delineated on maps published by the State of California. In accordance with the Seismic Hazard Mapping Act, the City has provided a geotechnical report defining and delineating any seismic hazard on the site.

A report by Kleinfelder Geotechnical Consultants, dated November 9, 2005, has been submitted and reviewed by the City's geotechnical peer reviewer. The results of the report indicate that the potential for soil liquefaction and seismically induced slope failure is low, and that the slope is stable under static and existing conditions. The project site is geotechnically suitable for the proposed subdivision, provided that the geotechnical recommendations within the report are implemented. In addition, a detailed slope stability analysis shall be performed for a design-level geotechnical investigation study once a final site layout of the proposed residential structures and grading is established. The report will be filed with the State Geologist. The geotechnical recommendations in the approved report will be incorporated into the project design and construction.

ENVIRONMENTAL ANALYSIS: An Initial Study and Mitigated Negative Declaration, was prepared and previously adopted for this project. The environmental analysis identified concerns regarding potential impacts to air quality, biological resources and stormwater quality. The Mitigated Negative Declaration includes mitigation measures which would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for the Planned District, P-2005-234. A finding is proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures and no further review is required.

Response from Agencies and Organizations: No agencies or organizations have provided comments on the project.

APPLICABLE FEES:

Development Impact Fees: This project will be subject to Citywide Development Impact Fees. These fees will include fees for fire protection, capital facilities and traffic impact. Residential projects will also be subject to park facilities and park dedication in-lieu fees. These fees shall be calculated at the fee rates in effect at the time of building permit issuance.

ENCLOSURES:

Exhibit "A"	Vesting Tentative Tract Map 7632
Exhibit "B"	Findings and Conditions of Approval
Exhibit "C"	Preliminary Planned District Exhibit
Exhibit "D"	Previously Approved Findings and Conditions of Approval for P-2005-234 (Informational)
Exhibit "E"	Canyon Heights Development Standards and Design Guidelines

EXHIBITS:

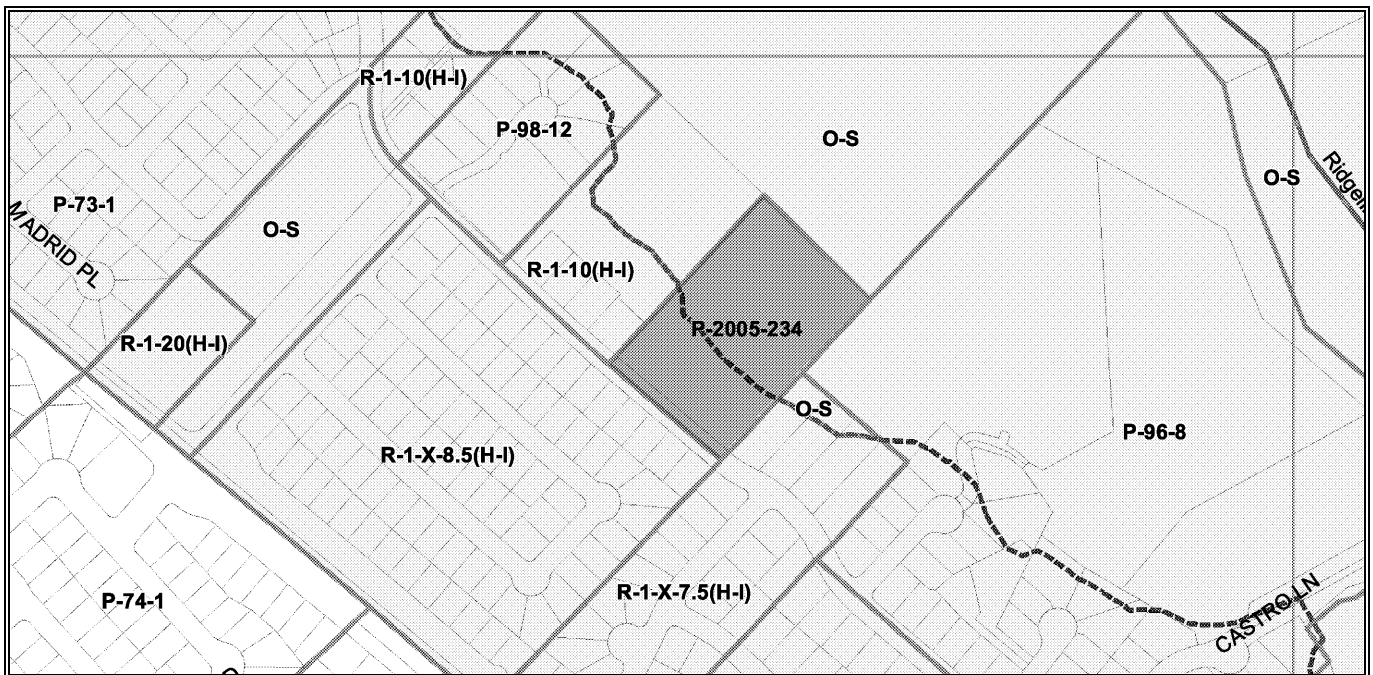
Exhibit "A"	Vesting Tentative Tract Map 7632
Exhibit "B"	Findings and Conditions of Approval
Exhibit "C"	Preliminary Planned District Exhibit
Exhibit "E"	Canyon Heights Development Standards and Design Guidelines

Recommended Actions:

1. Hold public hearing.
2. Find the previously approved Mitigated Negative Declaration with a Certificate of Fee Exemption addresses the proposed project and no further environmental review is required.
3. Find PLN2005-00234, (Planned District Minor Amendment and Vesting Tentative Tract Map 7632), are in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Open Space Chapters as enumerated within the staff report.
4. Find that the disposition and sale of the subject public property is in conformance with the General Plan.
5. Find PLN2005-00234, as per Exhibit "C" (Preliminary Planned District), fulfills the applicable requirements set forth in the Fremont Municipal Code.
6. Find PLN2005-00234 per Exhibit "A" (Vesting Tentative Tract Map 7632) and, Exhibit "B" (Findings and Conditions); fulfills the applicable requirements set forth in the Fremont Municipal Code.
7. Approve PLN2005-00234, per Exhibit "C" (Preliminary Planned District), per Exhibit "A" (Vesting Tentative Tract Map 7632), per Exhibit "E" (Canyon Heights Development Standards and Design Guidelines) and subject to Findings and Conditions in Exhibit "B".

Existing Zoning

Shaded area represents the Project Site



Existing General Plan

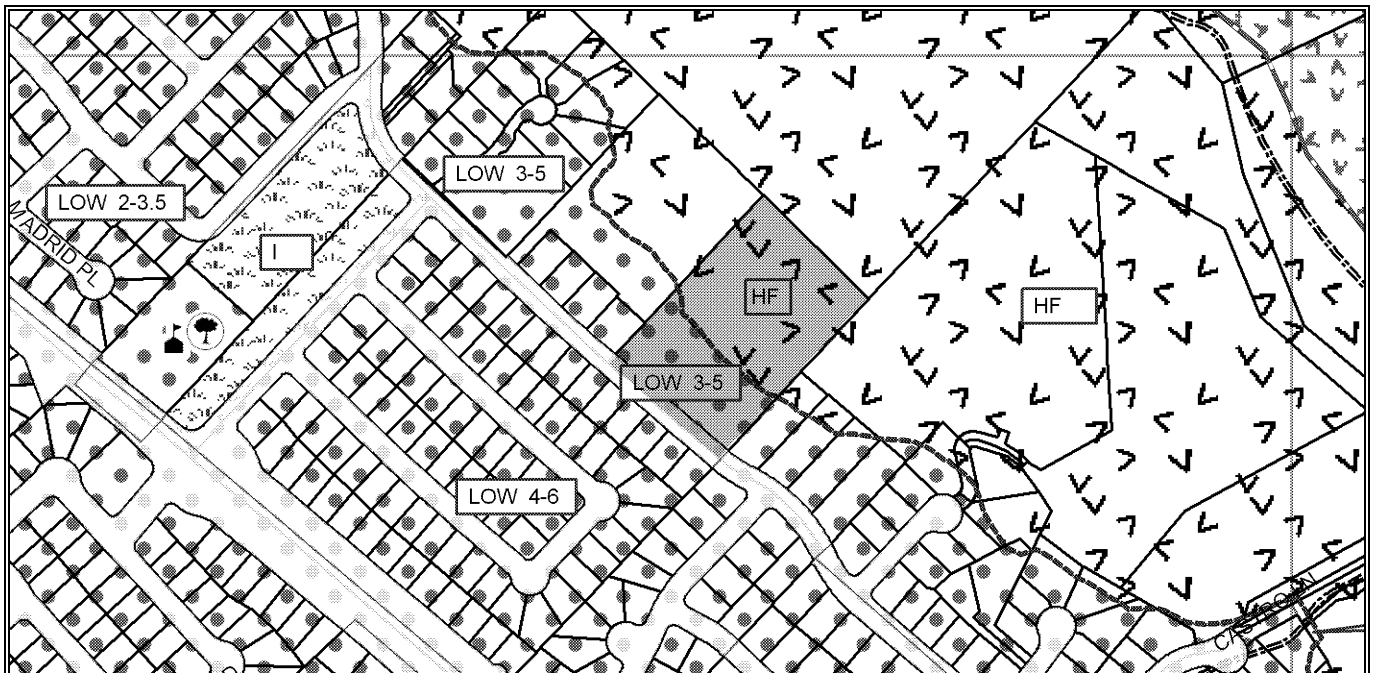


EXHIBIT "B"
Findings and Conditions of Approval
Canyon Heights - PLN2005-00234

Planned District Minor Amendment, Vesting Tentative Tract Map 7632 & General Plan Conformity

FINDINGS

The following findings are made by the Planning Commission based on information in the staff report and testimony at the public hearing on December 8, 2005, incorporated hereby:

Findings for PD Minor Amendment:

1. The site is suitable and adequate for the proposed modification to the development standards because the revised lot design is compatible with the surrounding area;
2. The proposed change in development standards would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system or other public facilities or services as no additional lots are proposed and adequate public utility capacity exists to serve the development;
3. The proposed change would not have a substantial adverse economic effect on nearby uses because the project remains single family residential similar to the existing area;
4. The proposed change would not have a substantial adverse impact on the general welfare of persons residing in the community because the Planned District provisions will ensure development will be compatible with the existing neighborhood;
5. The use is consistent with the General Plan for the reasons stated in the staff report.

Findings for Vesting Tentative Tract Map 7632:

1. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance, because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards as stipulated in the Planned District (P-2005-234) zoning district.
2. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan because the proposed development conforms to the requirements of the zoning district as well as the General Plan land use designations for the site.
3. The site is physically suitable for the type and proposed density of the development, because it is consistent with the General Plan and zoning designations for the site.
4. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because no fish or wildlife habitat exists on site and mitigation measures will be incorporated into the project to reduce potential impacts to less than significant levels.
5. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
6. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. Acquisition of any new easements will be required prior to the acceptance of the Final Map for this project.

Findings for General Plan Conformity:

1. The Planning Commission has considered the location, purpose and extent of the proposed disposition by the City of Fremont of an approximately 4.9 acre site located at 40770 Canyon heights Drive, for the purpose of private residential development. The Planning Commission hereby finds that the proposed disposition conforms to the adopted Fremont General Plan as adopted in 1991, and would contribute to the realization of Fundamental Goals of the General Plan.
2. The Planning Commission further finds that the proposed disposition would conform to the following General Plan Goals, Objectives and Policies:
 - **Fundamental Goal F-2:** *A harmonious blend of the natural and built environments.*
 - **Fundamental Goal F-3:** *A cityscape with an open feeling.*
 - **Land Use Policy 1.1:** *Residential uses as the primary use allowed in residentially designated areas.*
 - **Open Space Goal 1:** *Open space in the hills to protect Fremont's eastern open space frame.*
 - **Open Space Objective 1.1:** *Protection of the Hill Face, ridgeline and stream corridors.*
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 - **Open Space Objective 1.2:** *Hill area residential development sensitive to its environment and as unobtrusive as possible.*

General Conditions

1. Approval of this Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act
2. The developer shall dedicate right-of-way and install street improvements along Canyon Heights Drive. A right-of-way dedication of one foot is required along the project frontage. The developer shall install complete street improvements up to the centerline of Canyon Heights Drive along the project frontage. Street improvements include, but are not limited to: repair of pavement, curb, and gutter; installation of sidewalk, landscape, irrigation, streetlights, fire hydrants, and storm drain facilities; and relocation of existing utilities. All required dedications and street improvements are subject to review and approval of the City Engineer prior to Final Map approval.
3. In addition to the one foot right-of-way dedication, the developer shall dedicate a minimum six-foot wide public service easement along Canyon Heights Drive frontage of the five proposed lots.
4. All public and private storm drain inlets are to be stenciled "No Dumping - Drains to Bay" using thermoplastic stencils. Alternative inlet stencils or marking may be permitted, subject to City Engineer approval during final map and subdivision improvement plan checking.
5. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution.
6. The streetlight plan and joint trench plan shall be submitted by the developer with the first subdivision plan check for the street improvement plans and final map. The final streetlight plan and joint trench plan shall be completed prior to final map approval.
7. The developer shall request P.G.&E. to commence with the design of the utility underground work for the proposed development after the Planning Commissions approval of Tentative Tract Map 7632 and prior to Final Map approval.

8. Precise geometry and location of all driveways shall be subject to approval of the City Engineer.
9. Any development on the newly created lots will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities, park in lieu dedication, park facilities, and traffic impact. The fees shall be calculated at the rate in effect at the time of building permit issuance. The fees will be collected prior to building permit issuance.
10. In accordance with Section 66474.9(b) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City of Fremont or its agents, officers, or employees from any claim, action, or proceeding against the City of Fremont or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City of Fremont, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code.
11. The City of Fremont shall promptly notify the developer of any claim, action, or proceeding to attack, set aside, void, or annul, its approval and shall cooperate fully in the defense thereof.
12. All new utility service connections, including electrical and communications, shall be installed underground.
13. The developer shall execute and record a deed restriction / maintenance agreement or other acceptable mechanism, in a form acceptable to the City Attorney, placing the maintenance responsibility of the concrete "J" ditch and slope maintenance bench on the owner of Lot 5, and providing enforcement mechanisms for the owners of Lots 1 to 4 and the City.
14. An open space easement shall be recorded against the land above the Toe of the Hill Line on Lot 5 as shown on Vesting Tentative Tract Map 7632.
15. The developer, at time of initial sale, shall provide to the buyer information on good housekeeping of hazardous products, i.e. proper use and disposal, prohibited discharge practices, etc. Informational materials will be furnished by the City.
16. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
17. The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
18. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water measures for operation and maintenance of the project.
19. In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, Order R2-2003-0021, NPDES Permit No. CAS0029831, for any property with on-site stormwater treatment measures, the property owner shall enter into a maintenance agreement for the long-term operation and maintenance of said on-site storm water treatment measures. The agreement shall be recorded and run with the land.

SUBDIVIDER PLEASE NOTE:

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.